

COUNSEL LISTED ON SIGNATURE PAGE

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

HOLOGIC, INC., CYTYC CORPORATION,  
and HOLOGIC L.P.,

Plaintiffs,

vs.

SENORX, INC.,

Defendant.

SENORX, INC.,

Counterclaimant,

v.

HOLOGIC, INC., CYTYC CORPORATION  
and HOLOGIC L.P.,

Counterdefendants.

Case No. C08 00133 RMW (RS)

**JOINT CASE MANAGEMENT  
STATEMENT**

Case Management Conference

Date: May 9, 2008

Time: 10:30 a.m.

Courtroom: 6, 4<sup>th</sup> Floor

Judge: Hon. Ronald M. Whyte

1 The parties, through their counsel, hereby lodge the following jointly proposed case  
2 management plan.

3 **I. BRIEF DESCRIPTION OF THE ACTION.**

4 a. Plaintiff and counter-defendants Hologic, Inc., Cytyc Corporation and Hologic L.P.,  
5 (“Hologic”) are the assignees of U.S. Patent No. 5,913,813 (the “’813 Patent”), U.S. Patent No.  
6 6,413,204 (the “’204 patent”) and U.S. Patent No. 6,482,142 (the “’142 Patent”) (collectively the  
7 “Patents-In-Suit”).

8 b. Defendants and counterclaim plaintiffs SenoRx, Inc. (“SenoRx”) make, use, sell and/or  
9 offer for sale in the United States a medical device called the Contura Multi-Lumen Balloon<sup>TM</sup>  
10 (“Contura”), used for treatment of women with breast cancer.

11 c. Hologic alleges that SenoRx’s making, using, selling and/or offering for sale the  
12 Contura in the United States infringes the claims of the Patents-In-Suit, induces infringement of the  
13 Patent-In-Suit, and contributes to infringement of the Patents-In-Suit, and that such infringement has  
14 been willful.

15 d. Hologic further alleges violation of certain California False Advertising and Unfair  
16 Competition statutes by SenoRx in the marketing of the Contura, and also asserts federal Lanham Act  
17 unfair competition claims relating to SenoRx’s marketing of the Contura.

18 e. SenoRx denies infringement, contributing to infringement and inducing infringement of  
19 the Patents-In-Suit and contends that the Patents-In-Suit are invalid because they fail to meet the  
20 conditions for patentability set forth in at least 35 U.S.C. § 102, 103 and 112. SenoRx has  
21 counterclaimed for declaratory judgment of invalidity and/or non-infringement of the Patents-In-Suit.

22 f. SenoRx has moved to dismiss the California False Advertising and Unfair Competition  
23 claims and the federal Lanham Act unfair competition claims. In any event, SenoRx disputes that it  
24 has violated any of the statutes in question or otherwise acted improperly in its marketing of the  
25 Contura.

26 g. A Case Management Conference has been set for May 9, 2008 at 10:30 a.m. PDT.

27 **II. JURISDICTION AND SERVICE**

1 a. This Court has subject matter jurisdiction over Hologic's claims of patent infringement  
2 pursuant to 28 U.S.C. § 1338(a) because the claims arise under the Patent Act, 35 U.S.C. § 281.

3 b. SenoRx has moved to dismiss Hologic's unfair competition and false advertising  
4 claims, in part for lack of jurisdiction.

5 c. The parties do not dispute that this Court has personal jurisdiction over SenoRx for  
6 purposes of this case or that venue is proper in this District.

7 d. All parties have been served and no parties remain to be served or otherwise added to  
8 this case.

9 **III. THE PRELIMINARY INJUNCTION PROCEEDINGS**  
10 **AND SCOPE OF THE TRIAL:**

11 a. On April 21, 2008, this Court held a hearing on Hologic's motion for preliminary  
12 injunction. Hologic's motion pertained only to one claim of the '204 patent and one claim of the '142  
13 patent.

14 b. On April 25, 2008, this Court denied Hologic's motion for preliminary injunction. The  
15 Court ordered that the parties schedule a trial 60-90 days from the date of its order.

16 c. The parties met and conferred on April 28, 2008 regarding the scope of the trial.

17 d. The parties have agreed that the trial will address the patent claims (Counts I – III of  
18 Hologic's First Amended Complaint).

19 e. In light of the expedited trial date, Hologic has agreed to dismiss the California State  
20 Law Unfair Competition (Count V) and False Advertising (Count VI) claims of its First Amended  
21 Complaint.

22 f. The parties currently are discussing whether Hologic's federal Lanham Act unfair  
23 competition claims (Count IV) can be resolved without trial and, if not, how the issue should be  
24 addressed. If the parties jointly agree to a specific proposal before the case management conference,  
25 the parties will file a supplemental case management statement setting forth that proposal.

26 g. SenoRx will answer Hologic's First Amended Complaint within 10 days of the  
27 resolution of SenoRx's partial motion to dismiss or the other dismissal of all of Counts IV, V and VI.

28 h. The parties have agreed to and would propose that the Court bifurcate the remedies

1 portion as relates to Counts I – III for trial with each side waiving any right to a jury trial as to any and  
2 all remedies issues. The parties agree and would propose that discovery regarding remedies be stayed  
3 until after trial on Counts I-III.

4 i. The parties continue to discuss how Hologic's allegations of willful infringement will  
5 be adjudicated. If the parties jointly agree to a specific proposal before the case management  
6 conference, the parties will file a supplemental case management statement setting forth that proposal.

7 j. Hologic anticipates that 4-5 days will be needed for trial. SenoRx anticipates 6-7 full  
8 trial days will be needed for trial on Counts I-III.

9 **IV. DISCOVERY AND PROTECTIVE ORDER:**

10 The parties have agreed to abide by the Federal Rules of Civil Procedure with respect to  
11 discovery limits. A proposed protective order is being negotiated by the parties and will be submitted  
12 under separate cover. Any remaining disputes will be raised at the Case Management Conference.  
13 The parties have each taken steps to preserve evidence relevant to the issues reasonably evident in  
14 this action.

15 **V. CLAIM CONSTRUCTION PROCEDURE PER L.R. 2-1**

16 The parties do not expect to call live witnesses at the claim construction hearing. The parties  
17 agree to depositions of any declarants submitting testimony in connection with claim construction  
18 briefing, including experts. The parties agree to one deposition of each inventor of the patents-in-suit  
19 for purposes of this litigation. The parties currently believe that no prehearing claim construction  
20 conference is necessary. The parties are discussing the order of presentation at the claim construction  
21 hearing.

22 **VI. SETTLEMENT AND ADR**

23 The parties believe that they will best be in a position to discuss settlement through private  
24 mediation after the claim construction hearing. Accordingly, a tentative date for a potential  
25 mediation of June 13, 2008 is set forth in the proposed schedule below.

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**VII. PROPOSED CASE MANAGEMENT SCHEDULE:**

The parties propose the following schedule:

Event	Date
Initial disclosures	The parties have agreed to serve the information required by Rule 26(a)(1) on or before May 9, 2008.
Initiation of discovery	The parties have agreed to serve initial sets of written discovery on or after April 30, 2008.
Rule 3-1 Disclosures (infringement)	May 6, 2008
Rule 3-3 Disclosures (invalidity)	May 21, 2008
Rule 4-1 Disclosures (identification of terms for claim construction)	May 7, 2008
Rule 4-2 Disclosures (preliminary claim constructions)	May 12, 2008
Opening Claim Constr. Briefs (simultaneous)	May 21, 2008
Identification of Experts (name and subject matter of opinion(s) only)	May 23, 2008
Reply Claim Constr. Briefs (simultaneous)	May 30, 2008
Rule 4-3 Joint Claim Constr. Statement	May 30, 2008
Expert reports exchanged (simultaneous, by both parties as to infringement and invalidity without regard to burden)	June 4, 2008
Claim Construction Hearing	June 9, 2008
Potential mediation	June 13, 2008
Close of Discovery	June 25, 2008
Trial to a jury	Hologic requests trial the week of July 7, 2008 but is amenable to trial the week of July 14, 2008 if trial can be completed that week and if the Court so prefers. SenoRx requests trial to begin the week of July 14, 2008.

## VIII. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS

The parties' original disclosures under Civ. L.R. 3-16 remain unchanged. Copies of these certifications are attached hereto.

HOWREY LLP

By: \_\_\_\_\_/s/

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By: \_\_\_\_\_ /s/

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Attorneys for Defendant  
SenoRx, Inc.

**Filer's Attestation**

I, Katharine L. Altemus, am the ECF User whose identification and password are being used to file this Joint Case Management Statement. Pursuant to General Order No. 45, § X(B), I attest under penalty of perjury that concurrence in the filing of the document has been obtained from Aaron P. Maurer.

Dated: May 2, 2008

By: /s/  
Katharine L. Altemus

**Attachment**



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10 CORPORATION and HOLOGIC L.P.

11 UNITED STATES DISTRICT COURT  
12  
13 NORTHERN DISTRICT OF CALIFORNIA  
14  
15 SAN JOSE DIVISION

15 HOLOGIC, INC.  
16 CYTYC CORPORATION, and  
HOLOGIC L.P.,

17 Plaintiffs,

18 vs.

19 SENORX, INC.,

20 Defendant.  
21  
22  
23  
24  
25  
26  
27  
28

Case No.

**PLAINTIFFS' CERTIFICATE OF  
INTERESTED ENTITIES UNDER CIVIL  
LOCAL RULE 3-16**

**DEMAND FOR JURY TRIAL**

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RICHARD W. WIEKING  
CLERK  
U.S. DISTRICT COURT  
NO. DISTRICT COURT

E-FILING

ADR

**C08 00133 MEJ**

Pursuant to Civil Local Rule 3-16, the undersigned certifies that, other than the named parties, the following listed persons, associations of persons, firms, partnerships, corporations (including parent corporations) or other entities (i) have a financial interest in the subject matter in controversy or in a party to the proceeding, or (ii) have a non-financial interest in that subject matter or in a party that could be substantially affected by the outcome of this proceeding:

<u>Name</u>	<u>Connection or Interest</u>
Cianna Medical, Inc.	Plaintiff Hologic, Inc. owns less than a 20% interest in Cianna Medical, Inc., a company that sells brachytherapy devices.

Dated: January 8, 2008

HOWREY LLP

By: 

Henry C. Su

Attorneys for Plaintiffs  
Hologic, Inc.,  
Cytac Corporation and  
Hologic L.P.

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Bruce R. Genderson (*pro hac vice application pending*)  
 Aaron P. Maurer (*pro hac vice application pending*)  
 Rachel Shanahan Rodman (*pro hac vice application pending*)  
 Adam D. Harber (*pro hac vice application pending*)  
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Attorneys for Defendant  
 SENORX, INC.

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

----- x  
 HOLOGIC, INC. )  
 CYTYC CORPORATION, and )  
 HOLOGIC L.P., )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 SENORX, INC., )  
 )  
 Defendants. )  
 ----- x

Case No. C08-00133-MEJ

**DEFENDANT'S CERTIFICATE  
 OF INTERESTED ENTITIES OR  
 PERSONS UNDER CIVIL  
 LOCAL RULE 3-16**

Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.

1 Dated: February 15, 2008

By: /s/ F.T. Alexandra Mahaney

2 F.T. Alexandra Mahaney  
3 WILSON SONSINI GOODRICH & ROSATI  
4 12235 El Camino Real, Suite 200  
5 San Diego, CA 92130

6 Bruce R. Genderson (*pro hac vice application pending*)

7 Aaron P. Maurer (*pro hac vice application pending*)

8 Rachel Sherman Bedman (*pro hac vice application pending*) of 4  
Case 3:08-cv-00133-MEJ Document 118 Filed 02/15/2008 Page 2

9 Adam D. Harber (*pro hac vice application pending*)

10 WILLIAMS & CONNOLLY LLP

11 725 Twelfth St. NW

12 Washington, DC 20005

13 Attorneys for Defendant

14 SENORX, INC.

CERTIFICATE OF SERVICE

U.S. District Court, Northern District of California,  
*Hologic, Inc. et al. v. SenoRx, Inc.*  
Case No. 08-CV-0133 MEJ

I, Kirsten Blue, declare:

I am and was at the time of the service mentioned in this declaration, employed in the County of San Diego, California. I am over the age of 18 years and not a party to the within action. My business address is 12235 El Camino Real, Ste. 200, San Diego, CA, 92130.

Case 3:08-cv-00133-MEJ Document 14 Filed 02/15/2008 Page 3 of 4  
On February 15, 2008, I served a copy(ies) of the following document(s):

**DEFENDANT'S CERTIFICATE OF INTERESTED ENTITIES  
OR PERSONS UNDER CIVIL LOCAL RULE 3-16**

on the parties to this action by placing them in a sealed envelope(s) addressed as follows:

Henry C. Su (suh@howrey.com)	Attorneys for Plaintiffs
Katharine L. Altemus (altemusk@howrey.com)	HOLOGIC, INC. CYTYC
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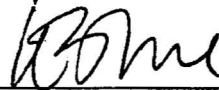
☐ (BY MAIL) I placed the sealed envelope(s) for collection and mailing by following the ordinary business practices of Wilson Sonsini Goodrich & Rosati, 12235 El Camino Real, Ste. 200, San Diego, CA. I am readily familiar with WSGR's practice for collecting and processing of correspondence for mailing with the United States Postal Service, said practice being that, in the ordinary course of business, correspondence with postage fully prepaid is deposited with the United States Postal Service the same day as it is placed for collection.

☐ (BY OVERNIGHT DELIVERY) I placed the sealed envelope(s) or package(s), to the addressee(s) noted above, designated by the express service carrier for collection and overnight delivery by following the ordinary business practices of Wilson Sonsini Goodrich & Rosati, 12235 El Camino Real, Ste. 200, San Diego, CA. I am readily familiar with WSGR's practice for collecting and processing of correspondence for overnight delivery, said practice being that, in the ordinary course of business, correspondence for overnight delivery is deposited with delivery fees paid or provided for at the carrier's express service offices for next-day delivery the same day as the correspondence is placed for collection.



1 ☒ (BY CM/ECF) I caused such document(s) to be sent via electronic mail through the Case  
2 Management/Electronic Case File system with the U.S. District Court for the Northern  
3 District of California.

4 I declare under penalty of perjury under the laws of the United States that the above is true  
5 and correct, and that this declaration was executed on February 15, 2008.

6 

7 Kirsten Blue

8 Case 3:08-cv-00133-MEJ Document 14 Filed 02/15/2008 Page 4 of 4